

## ADVISORY OPINION 91-25 [1991-17]

The Ethics Commission has reviewed your request for advice concerning whether corporate securities held in a spouse's individual retirement account (IRA) should be reported on a public employee's financial disclosure statement. Based on your request for advice, the Commission understands the facts to be as follows:

You are required to file a public financial disclosure statement under Section 19A-17.<sup>1</sup> Your spouse owns a rollover IRA managed by an investment management company. The management company makes all investment decisions and, in fact, does not allow you or your spouse to make investment decisions. Furthermore, neither you nor your spouse attempts to direct the investment decisions of the management company. The management company sends your spouse account statements showing transactions made during the previous month. The management invests the assets of the IRA in corporate securities.

Section 19A-19 requires a public employee to disclose on the employee's financial disclosure statement "all economic interests in any business." Section 19A-4(b) defines a business as any "for profit or non-profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust, or foundation." Section 19A-4(j) defines an economic interest as "any source of income or any other legal or equitable economic interest . . . which is owned or held, in whole or in part, jointly or severally, directly or indirectly."<sup>2</sup> Finally, Section 19A-20 requires a public employee to treat as the employee's own property, an economic interest of a spouse.

You have asked if: (a) You must list each security in which the management company has invested the assets of the IRA and each transaction that occurred in the account during the previous year; or (b) you may report the account with the management company and the value of the account at the end of the reporting period?

The Commission believes that under the facts provided to us your spouse's IRA is substantially equivalent to an economic interest in a mutual fund. Accordingly, the Commission concludes that you should disclose the IRA on your financial disclosure statement and the value of the IRA at the close of the reporting period. You do not need to report each corporate security held in the IRA during the reporting period. In reaching this conclusion, the Commission finds the following factors of particular importance:

1. The Management company does not allow you or your spouse to direct investment decisions;
2. Neither you nor your spouse, in fact, attempts to direct investment decisions; and

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<sup>1</sup> Section references are to the Montgomery County Code (1984).

<sup>2</sup> Section 19A-4(j) excludes from the definition of an economic interest certain assets such as bank accounts and retirement plans; these exemptions are not applicable to the IRA owned by your spouse.

3. The accountings made by the management company reflect transactions that occurred the previous month. Therefore, at any given time, neither you nor your spouse can be certain what securities are held in the IRA.

The IRA should be disclosed on Part III of the financial disclosure statement which concerns business holdings. A copy of Part III is attached for your reference. The Commission suggests the following reporting format:

Box 1—NAME OF BUSINESS—indicate the name of the management company and the title of the account;

Box 3—ADDRESS OF PRINCIPAL PLACE OF BUSINESS—Give the address of the management company;

Box 4—NATURE AND AMOUNT OF INTEREST—Indicate the value of the account at the end of the reporting period;

Box 5—CONDITIONS AND ENCUMBRANCES—Indicate that the account is an IRA;

Box 6—PERCENT OF BUSINESS OWNED—Indicate 100%;

Box 7—DATES OF ACQUISITIONS/TRANSFERS—Indicate the date the account was acquired;

Boxes 8, 9, and 10 would be used only if all or a portion of the assets are transferred out of the account.

The Commission trusts that this advice has been responsive to your inquiry. If you have further questions, please do not hesitate to contact the Commission.

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